evidence that a "general assessment" was as a matter of administrative policy carried out once every 9 or 10 years on the annual values of owner-occupied properties in Singapore, or in Binjai Park at any rate, unless any such owner in the meantime renovated his property, in which case, the annual value of such a property was assessed strictly according to the provisions of the Act. One has in the case before me a deliberate administrative policy and the consequential effect of the implementation of an aspect of that policy.

On the other hand, the Privy Council in stressing the supremacy of the provisions of our Constitution pointed out that, in its view, an intentional and systematic under-valuation of the type and nature considered by the United States Supreme Court in *Sioux City Bridge Co.* v. *Dakota Country*[6] would be contrary to the equal protection clause. Lord Fraser of Tullybelton at p. 53 ventured the further opinion that "(s)omething less might perhaps suffice . . ."

The other *dicta* of Lord Fraser of Tullybelton which I wish to quote is in the following terms at p. 53:

> "In the event of the . . . provisions of sections 2 and 18(7) of the . . . (Property Tax) Act leading to a valuation inconsistent with the equal protection clause of the (Singapore) Constitution, it might be that the principle of correctness (in determining the annual value) would have to yield to the principle of uniformity."
>
> [The words within the brackets are added by me to provide the reference and context.]

Although these were *obiter dicta* of the Privy Council, I say most respectfully that they are not only highly persuasive but are most apt when applied to the case before me. In the circumstances, I would allow the appeal with costs and declare that applying the principle of uniformity to the appellant, the annual value of the property for the year 1976 should be $16,240.

Appeal allowed.

Solicitors: *Rodyk & Davidson.*

K. ABDUL RASHEED v. PUBLIC PROSECUTOR AH CHAK ARNOLD v. PUBLIC PROSECUTOR

[A.Cr.J. (Lai Kew Chai J.) January 4, 1985]

[Singapore – Magistrate's Appeal Nos. 41 & 78 of 1984]

Criminal Law & Procedure – Acquittal – Court's discretionary power to direct an acquittal – Meaning of phrase "he (the Public Prosecutor) will not further prosecute the defendant upon the charge" in Criminal Procedure Code (Cap. 113), s. 183.

In Magistrate's Appeal No. 78 of 1984, Arnold Ah Chak, a detective sergeant of the Singapore Police Force, faced two charges that he on two different days in June, 1983 did corruptly obtain for himself from two prostitutes gratification in the form of sexual intercourse as inducements to return them their passports and not putting them on the blacklist for immigration purposes. He was alleged to have committed offences under section 6(a) of the Prevention of Corruption Act (Cap. 104). When the case was called on for hearing on March 26, 1984, the learned Deputy Public Prosecutor applied for the accused to be discharged not amounting to an acquittal in respect of the two charges as the prosecution could not go on due to the fact that the two prostitutes, as principal witnesses for the prosecution, were not available. The learned District Judge ordered that the accused be discharged not amounting to an acquittal on the two charges. His sole ground was that the prosecution was unable to proceed because of the unavailability of the two witnesses. Since it was not withdrawing the charges, the prosecution had not informed the court that "(it) will not further prosecute the (accused) upon the charge(s)" within the meaning of that phrase (as substituted) in sub-section 183(1) of the Criminal Procedure Code. He accordingly held that "there was nothing (in the provisions of the Criminal Procedure Code) which could empower (him) to discharge the accused amounting to an acquittal".

In Magistrate's Appeal No. 41 of 1984, K. Abdul Rasheed was charged with the offence of having in May, 1982 with two named persons and in furtherance of their common intention committed theft of two sums of cash under section 380 read with section 34 of the Penal Code (Cap. 103). When the case came on hearing on February 16, 1984 before the learned District Judge, the prosecuting officer applied for an order that the accused be given a discharge not amounting to an acquittal. Counsel for the accused objected and asked for an acquittal. The case was stood down. At the resumption of the case in the afternoon, the District Judge understood the prosecution to say that it was not withdrawing the charge, although the records show that the prosecution had merely renewed its application for a discharge not amounting to an acquittal. The prosecution did not inform the court of the reason or reasons why it was not going on with the prosecution beyond that stage.

Held: (1) in exercising its power under sub-section 183(2) of the Criminal Procedure Code, a court must bear in mind and give due regard to the right of the prosecution to proceed at a later stage. On the other hand, there is ample persuasive authority for the proposition that unless some good ground is shown it would not be right to leave

an individual saddled with a charge in which proceedings are stayed for an indeterminate period;

(2) in *Ah Chak Arnold's* case, the learned District Judge had misdirected himself, in that he had proceeded on the erroneous basis that he had no power to direct an acquittal because the prosecution had not informed the court that it will never ever prefer the same charges against the appellants. The court would therefore direct that the discharge in Magistrate's Appeal No. 78 of 1984 shall amount to an acquittal;

(3) in *K. Abdul Rasheed's* case, there was no consideration given at all to the question whether or not it was unfair to subject the accused to a charge hanging over his head for an indefinite period. From the grounds of decision of the learned District Judge, it was implicit that the practice of the court was to order a discharge not amounting to an acquittal if the prosecution indicated that it was not withdrawing the charge. If this was the practice, it was clearly wrong. The appeal in this case should therefore be allowed.

Cases referred to:

(1) *Seet Ah Ann* v. *Public Prosecutor* [1950] M.L.J. 293.
(2) *Goh Oon Keow* v. *R.* [1949] M.L.J. 35.
(3) *Ariffin bin Cassim Jayne* v. *Public Prosecutor* [1953] M.L.J. 126.
(4) *Koh Teck Chai* v. *Public Prosecutor* [1968] 1 M.L.J. 166, 167.
(5) *Kuppusamy* v. *Public Prosecutor* [1948] M.L.J. 25.

(The following cases were also cited in argument: *Public Prosecutor* v. *Mat Zain* [1948-9] M.L.J. Supp. 142; *Public Prosecutor* v. *Kiew Ah Wan* [1949] M.L.J. 147; *Public Prosecutor* v. *Suppiah Pather,* Editorial Note reported under *Ariffin* v. *Public Prosecutor* [1953] M.L.J. 26; *Tan Ah Chan* v. *R.* [1955] M.L.J. 218; *R.* v. *Chong Song Chun* [1961] M.L.J. 313; *Public Prosecutor* v. *Ng Nam Onn* [1964] M.L.J. 455; *Public Prosecutor* v. *Khoo Kay Jin* [1973] 1 M.L.J. 259; *Public Prosecutor* v. *Pereira* [1977] 1 M.L.J. 12; *R.* v. *Allen* (1862) 1 B & S 850; 121 E.R. 929).

MAGISTRATE'S APPEALS.

Mohideen M.P. Haja Rubin for both appellants.

David Khor (Deputy Public Prosecutor) for the Public Prosecutor.

Cur. Adv. Vult.

Lai Kew Chai J.: At the conclusion of the hearing of two Magistrate's Appeals last Friday, which were heard together as they were both concerned with the ambit of section 183 of the Criminal Procedure Code (Cap. 113), I allowed both appeals, varied the orders of two learned District Judges and directed that the discharges in both the appeals amounted to acquittals. In addition to discharging my duty to do so, I am setting out my grounds in deference to since I found myself at variance with the written grounds of decisions of both the learned District Judges who have had much experience in the administration of criminal justice in the Subordinate Courts.

The two appeals arose in this way. In Magistrate's Appeal No. 78 of 1984, Arnold Ah Chak, a detective sergeant of the Singapore Police Force, faced two charges that he on two different days in June, 1983 did corruptly obtain for himself from two prostitutes gratifications in the form of sexual intercourse as inducements to return them their passports and not putting them on the blacklist for immigration purposes. He was alleged to have committed offences under section 6(a) of the Prevention of Corruption Act (Cap. 104). When the case was called on for hearing on March 26, 1984, the learned Deputy Public Prosecutor applied for the accused to be discharged not amounting to an acquittal in respect of the two charges as the prosecution could not go on due to the fact that the two prostitutes, as principal witnesses for the prosecution, were not available.

Learned counsel for the accused applied to the learned District Judge to direct a discharge amounting to an acquittal under section 183(2) of the Criminal Procedure Code but the latter declined to do so. Instead, he ordered that the accused be discharged not amounting to an acquittal on the two charges. His sole and only ground may be summarised in this way. The prosecution in the case was unable to proceed because of the unavailability of the two witnesses. Since it was not withdrawing the charges, the prosecution had not informed the court that "(it) will not further prosecute the (accused) upon the charge(s)" within the meaning of that phrase (as substituted) in subsection 183(1) of the Criminal Procedure Code. He accordingly held that "there was nothing (in the provisions of the Criminal Procedure Code) which could empower me to discharge the accused amounting to an acquittal." With the greatest of respect to the learned District Judge, I am of the view that he has misconstrued the meaning of the phrase in sub-section 183(1) of the Code which I have quoted. I must now recite section 183 of the Code which is in the following terms:-

"183(1) At any stage of any summary trial before judgment has been delivered, the Public Prosecutor may, if he thinks fit, inform the court that he will not further prosecute the

defendant upon the charge and thereupon all proceedings on the charge against the Defendant shall be stayed and he shall be discharged from and of the same.

(2) Such discharge shall not amount to an acquittal unless the court so directs except in cases coming under section 176.

What then must the Public Prosecutor inform the court before the consequences of a stay of the proceedings and a discharge of a defendant can arise and take place? In other words, what is the meaning of the phrase "he (the Public Prosecutor) will not further prosecute the defendant upon the charge?" To my mind, there are two possible meanings. The first is the Public Prosecutor informing the court that for some reason, such as the unavailability of a prosecution witness, he will not at the stage when the case has come on for hearing go on with the prosecution of the defendant upon the charge. In other words, he informs the court that he has decided that he will not take the prosecution beyond what has gone on up to that stage. The other meaning is the Public Prosecutor informing the court that he will not ever prosecute the defendant on the charge. The learned District Judge had interpreted the phrase to bear the second meaning. In doing so, I am of the view that he had fallen into error. If the word "further" may properly be read as "ever" in sub-section 183(1) of the Code, which would give the condition precedent in the sub-section a narrow and restrictive scope, then it seems to me that the ensuing provisions in sub-section (1), which set out the consequences of a stay of the proceedings and the discharge of the defendant, are too convoluted or tortuous. If the Public Prosecutor were withdrawing the charge to the intent that he will not ever resurrect the charge against the Defendant, the ensuing provisions setting out the consequence should, and only could, be that the defendant shall be discharged from and of the same and that such discharge shall amount to an acquittal. The elaborate procedure for a stay and a discharge and the court's power to direct an acquittal would have been unnecessary.

If the phrase is construed as bearing the first meaning, no such difficulties arise at all. Indeed, the ensuing provisions in sub-section (1) and the provisions of sub-section (2) will work very well. When the prosecution under sub-section 183(1) of the Code informs the court that he will not go on with the prosecution, all proceedings on the charge against the defendant shall be stayed and the defendant shall be discharged from and of the same. Sub-section 183(2) begins with the proposition of law that such discharge shall not amount to an acquittal, followed by the crucial words "unless the court so directs ...". I need not refer to the cases coming within section 176 of the Code as they are irrelevant for present purposes. These crucial words plainly confer on the court the discretionary power to direct an acquittal and the power arises the moment the prosecution informs the court that it is not going on with the prosecution of the defendant upon the charge, whether or not the prosecution has decided forever to withdraw the charge.

If an accused applies for a discharge amounting to an acquittal, a court must bear in mind that the Legislature has in the opening words of sub-section 183(2) set down the principle that the discharge "shall not" amount to an acquittal. There must be circumstances in the proceedings so far on record or the accused must show sufficient reasons to displace the principle that the discharge shall not amount to an acquittal. In exercising its power under sub-section 183(2) of the Code, a court must bear in mind and give due regard to the right of the prosecution to proceed at a later stage: *Seet Ah Ann* v. *Public Prosecutor*[1] On the other hand, there is ample persuasive authority for the proposition that unless some good ground is shown it would not be right to leave an individual saddled with a charge in which proceedings are stayed for an indeterminate period: see *Goh Oon Keow* v. *Rex*[2], the *dicta* of Mr. Justice Spenser Wilkinson in *Public Prosecutor* v. *Suppiah Pather* reported in the Editorial Note to *Arifin bin Cassim Jayne* v. *Public Prosecutor*[3] which were approved in *Koh Teck Chai* v. *Public Prosecutor*[4], by Ong Hock Sim J. (as he then was). It is not desirable to set down any principle which a court must follow when acting under sub-section 183(2) of the Code as if it is writ in stone and thereby fetter the discretion of the court which has to be judicially exercised. Circumstances do vary from case to case. Each case has to be dealt with on its merits, with the court bearing in mind the public interest and the right of the individual to which I have alluded.

Seeing that the learned District Judge had misdirected himself, in that he had proceeded on the erroneous basis that he had no power to direct an acquittal because the prosecution had not informed the court that it will never ever prefer the same charges against the appellant, I had for myself at the hearing of this appeal to decide

whether in all the circumstances of the case I would direct that the discharge shall amount to an acquittal.

The learned District Judge was informed that two principal prosecution witnesses were not available. On that basis the learned Deputy Public Prosecutor applied that the appellant be discharged not amounting to an acquittal. Obviously, the prosecution indicated that it was not going on, indeed was unable to go on, with the prosecution but there was no indication that it will never ever prefer the same charges against the appellant. It was equally obvious that in applying for a discharge not amounting to an acquittal, the prosecution was acting under sub-section 183(1) of the Code. In the course of the appeal, it was disclosed to me and it was not challenged by the learned Deputy Public Prosecutor, who had not appeared before the learned District Judge, that one of the two witnesses had died and that the other, a foreigner, was unavailable and likely to remain unavailable for an indefinite period. I was further told that the appellant had been reinstated in the Singapore Police Force after he had faced certain disciplinary proceedings and had emerged unscathed. Through his counsel, he asked that he be afforded the opportunity of a trial to clear his name and indicated that he was prepared to stand trial if the prosecution could indicate if it was able to proceed. The learned Deputy Prosecutor was unable to give the court any such indication. I was accordingly persuaded that it would be unfair to subject him to any further agony and I directed that the discharge should amount to an acquittal.

I now turn to the other appeal. K. Abdul Rasheed s/o Assainar was charged with the offence of having in May, 1982 with two named persons and in furtherance of their common intention committed theft of two sums of cash under section 380 read with section 34 of the Penal Code (Cap. 103). When the case came on for hearing on February 16, 1984 before the learned District Judge, the prosecuting officer applied for an order that the accused be given a discharge not amounting to an acquittal. Counsel for the accused objected and asked for an acquittal as the prosecution, he alleged, did not wish to proceed. It is not clear from the records of appeal if he was saying that the prosecution was forever not prosecuting the accused on the same charge. The case was stood down. At the resumption of the case in the afternoon, the learned District Judge understood the prosecution to say that it was not withdrawing the charge, although the records show that the prosecution had merely renewed its application for a discharge not amounting to an acquittal. Beyond that, the prosecution did not inform the court of the reason or reasons why it was not going on with the prosecution beyond that stage.

Looking at the grounds of decision of the learned District Judge, the sole ground was that the court should not deny the prosecution the right to proceed with its case subsequently and reliance was placed on *Kuppusamy* v. *Public Prosecutor*[5]. There was no consideration given at all to the question whether or not it was unfair to subject the accused to a charge hanging over his head for an indefinite period. As I read the grounds of decision of the learned District Judge, it was implicit that the practice of the court was to order a discharge not amounting to an acquittal if the prosecution indicated that it was not withdrawing the charge. If this was the practice, as I think it was, I have to say that it was clearly wrong. For the reasons I had given in the earlier appeal, a court has to act judicially and consider both the public interest and any unfairness to an accused person. A consideration of one aspect without the consideration of the other was not a proper exercise of the power of the court under sub-section 183(2) of the Code. I had therefore to consider all the circumstances, but my task was considerably lightened as the learned Deputy Prosecutor indicated to me that he was not resisting the appeal. I accordingly made the order I did.

Order accordingly.

Solicitors: *Amarjit Rubin & Partners.*

BUTTERWORTH & CO. (PUBLISHERS) LTD. & ORS. v. NG SUI NAM
LONGMAN GROUP LTD. & ANOR. v. NG SUI NAM
THE ROYAL ACADEMY OF MUSIC & ANOR. v. NG SUI NAM

[O.C.J. (Thean J.) February 25, 1985]

[Singapore – Suit Nos. 1924, 3913 & 3914 of 1981]

Copyright – Actions for infringement – Scope of Imperial Copyright Act 1911 – Whether copyright protection conferred on all works first published in U.K. or only on works first published in Singapore – Copyright Act (Cap. 187).